IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1708 of 1996

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SUSHEELABEN TRIBHOVANDAS PATEL - Applicant(s)

Versus

CHANDUBHAI BHIKHABHAI PATEL & 1 - Opponent(s)

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Appearance :
MR NILESH A PANDYA for Petitioner No(s).: 1.
MR DHIRENDRA MEHTA for Respondent No(s).: 1,2.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 20/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 30th April, 1996 passed by the learned Joint District Judge, Vadodara in Regular Civil Appeal No. 214 of 1985, the respondent, plaintiff in Rent Suit No.267 of 1982, has

preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

The petitioner-plaintiff is the owner of the property bearing Municipal Census No. B/7/543, situated on Siddhanath Road at Vadodara. The plaintiff had purchased the suit property in the year 1980 from one Becharbhai Motibhai Patel. The said Becharbhai Patel had leased three rooms on the ground floor of the said property to the defendant no. 1 for a monthly rent of Rs. 200/=. The plaintiff instituted Rent Suit No. 267 of 1982 in the Court of Small Causes, Vadodara for recovery of possession of the suit premises on the ground, *inter alia,* that the defendant no. 1-the tenant had unlawfully sublet/ transferred/assigned two rooms in the suit premises to the defendant no. 2. The suit was contested by the defendant no. 1 vide written statement Exh. 16 and by the defendant no. 2 vide written statement Exh. 17. Both the defendants had a common defence that they were the joint tenants in the suit premises and the defendant no. 2 was not a sub-tenant nor was he in absolute possession of any part of the suit premises, to the exclusion of the defendant no.1.

The learned trial Judge, by judgment and order dated

3rd May, 1985, allowed the suit and passed decree for eviction against the defendants. Feeling aggrieved, the defendants preferred Regular Civil Appeal No. 214 of 1985 in the Court of learned District Judge, Vadodara. The learned Joint District Judge, Vadodara allowed the Appeal and *set-aside* the decree for eviction passed by the trial Court. Therefore, the present Revision Application.

The lower appellate Court has on appreciation of evidence on record held that the defendants no. 1 & 2 were the brothers-in-law and were joint tenants in the suit premises. They did not have a separate residence in any part of the suit premises to the exclusion of the other. The defendant no. 2, therefore, was not an unlawful subtenant as alleged by the plaintiff.

I have perused the pleadings and the evidence on record, particularly the panch report [Exh. 58] and the documents Exh. 84 to 90. In my opinion the plaintiff did fail to establish that the defendant no. 2 was residing in part of the suit premises to the exclusion of the defendant no. 1, as alleged. On the contrary, the evidence proves that the defendants were residing together in the suit premises since inception of the tenancy.

No ground for interference is made out. Revision

Application is dismissed. Rule is *discharged*. There shall be no order as to costs.

{Miss R.M Doshit, J.}

*Prakash**